

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE:

SUSAN J. SCHOFIELD

Debtor

SUSAN J. SCHOFIELD

Movant

V.

HSBC BANK USA, NATIONAL ASSOCIATION, AS  
TRUSTEE FOR HOME EQUITY LOAN TRUST  
SERIES ACE 2004-HE3

Respondent

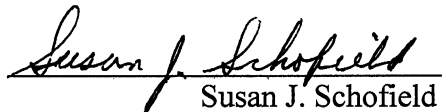
) Bankruptcy No.10-20927JKF  
)  
) Chapter No. 13  
)  
) Related to Document No. 32  
)  
) Document No.  
)  
) Hearing Date: Shall be  
) scheduled by the court.  
)  
) Hearing Time: Shall be  
) scheduled by the court.  
)  
) Response Date: Shall be  
) scheduled by the court.

**MOTION FOR RECONSIDERATION OF OR TO VACATE OR MODIFY AN  
ORDER IN CONNECTION TO ORDER GRANTING IN REM RELIEF FROM  
THE AUTOMATIC STAY**

**FILED**

**MAY 03 2011**

CLERK, U.S. BANKRUPTCY COURT  
WEST. DIST. OF PENNSYLVANIA

  
Susan J. Schofield  
2520 BEAVER AVENUE  
MONACA, PA 15219  
Phone: 724-650-0971

May 2, 2011

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FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE:

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AND NOW COMES Debtor, Susan J. Schofield, and requests reconsideration of  
the April 20, 2011 Order hereto attached.

1. HSBC Bank USA, National Association, as trustee claims to be creditor in this  
proceeding but cannot provide a calculation and explain calculation of amount allegedly  
due.

2. HSBC Bank USA, National Association was granted in rem relief from  
automatic stay without adequate factual investigation or legal basis. *In re Gorshtein*, 285

B.R. 118 (Bankr. S.D.N.Y. 2002)

3. The Proof of Claim in this case is filed without supporting documents required by Rule 3001, *In re Prevo*, 394 B.R. 847 (Bankr. S.D. Tex 2008).

4. Debtor had requested the Court to Order an Evidentiary Hearing to determine that HSBC Bank has legal basis to file Proof of Claim and or Motion for In Rem Relief from Automatic Stay in this bankruptcy proceeding.

5. Purported Creditor had commenced foreclosure proceedings in State Court , a prepetition foreclosure, but does not yet have a judgment.

6. At the April 20, 2011 hearing nor anytime before, purported creditor could not show it had right to undertake prepetition foreclosure, *In re Schwartz*, 366 B.R. 265 (Bankr. D. Mass.2007).

7. Debtor has discovered an Assignment of Mortgage which is attached hereto.

8. This assignment was never brought to the attention of the Court by HSBC counsel.

9. The assignment is not signed by the mortgagor, rather the law firm partner, Francis S. Hallinan of Phelan, Hallinan & Schmiege claiming to be the Assistant Secretary and Vice-President of MERS, the mortgagee and the counsel for the creditor HSBC . The law firm appears on both sides of the mortgage assignment. *In re Brian W Davies*, Case No. 6:10-bk-37900-TD, USBC, Central District of California. *In re Tandela Mims*, Case No. 10-14030 (Bankr. S.D.N.Y. 2010).

10. It appears that the attorneys filing the proof of claim did not take adequate steps to verify the truth or accuracy of their statements as required under Rule 9011.

11. HSBC alleges that it is the Trustee under the Pooling and Servicing Agreement

Home Equity Loan Trust Series Ace 2004-HE3. However, HSBC failed to provide any Documentation whatsoever proving that HSBC became the Trustee in accordance with the terms of the Trust naming HSBC Bank USA National Association as Trustee.

12. The Trust contains any and all beneficial rights, liabilities and conveyance rules concerning Debtor's mortgage and note and is subject to the terms of the Pooling and Service Agreement.

13. To establish standing, the creditor needs to provide proof of all of the transfers and receipts from origination to the party alleging to be the creditor in this action, including the full contents of the Master Custodian File held by the Master Custodian of the Trust.

14. A federal court can not have jurisdiction unless a party has constitutional standing. To have standing, the creditor must show that it is the beneficiary of the Note, that the note has been properly transferred with the Mortgage, or that appropriate agency authority has been issued from a party with the power to do so. The creditor in this case has failed to prove any of the above.

15. And, if the creditor filing the proof of claim is not the real party in interest, it must join the real party in interest pursuant to Federal Rules of Civil Procedure 19.

11. Debtor maintains that HSBC is not authorized to file a proof of claim or to Motion for in rem relief in this proceeding.

WHEREFORE, Debtor respectfully prays of the Court to vacate or modify the Order and schedule an evidentiary hearing and for such other and further relief as this Court may deem just and proper.

Respectfully,

  
\_\_\_\_\_  
Susan J. Schofield

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE:

SUSAN J. SCHOFIELD	)	Bankruptcy No.10-20927JKF
	)	
Debtor	)	Chapter No. 13
	)	
SUSAN J. SCHOFIELD	)	Related to Document No. 32
	)	
Movant	)	Document No.
V.	)	
HSBC BANK USA, NATIONAL ASSOCIATION, AS	)	Hearing Date: Shall be
TRUSTEE FOR HOME EQUITY LOAN TRUST	)	scheduled by the court.
SERIES ACE 2004-HE3	)	
Respondent	)	Hearing Time: Shall be
	)	scheduled by the court.
	)	
	)	Response Date: Shall be
	)	scheduled by the court.

**MOTION FOR RECONSIDERATION OF OR TO VACATE OR MODIFY AN ORDER IN  
CONNECTION TO ORDER GRANTING IN REM RELIEF FROM THE AUTOMATIC  
STAY**

**CERTIFICATE OF SERVICE**

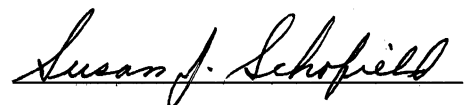
I hereby certify under penalty of perjury that I served or caused to be served the above captioned pleading Motion for Reconsideration of or to Vacate or Modify Order Granting in Rem relief from the Automatic Stay and the Notice of Hearing on the parties at the addresses shown below on May 2, 2011.

Service by First Class U.S. Mail Postage Prepaid.

RONDA J. WINNECOUR, ESQUIRE  
(TRUSTEE)  
SUITE 3250, USX TOWER, 600  
GRANT STREET  
PITTSBURGH, PA 15219

Gary J. Gaertner, ESQUIRE  
Phelan Hallinan & Schmieg, LLP  
555 GRANT STREET, STE 360  
Pittsburgh, PA 15219

OFFICE OF THE UNITED STATES TRUSTEE  
1001 LIBERTY AVENUE, SUITE 970  
PITTSBURGH, PA 15222



Susan J. Schofield, Debtor/Movant  
2520 BEAVER AVENUE  
MONACA, PA 15219  
Phone: 724-650-0971

FILED

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

APR 20 2011

IN RE:

SUSAN J. SCHOFIELD

Debtor

HSBC BANK USA, NATIONAL ASSOCIATION, AS  
TRUSTEE FOR HOME EQUITY LOAN TRUST  
SERIES ACE 2004-HE3

Movant

v.

SUSAN J. SCHOFIELD

and

RONDA J. WINNECOUR, ESQUIRE (TRUSTEE)

Respondents

BK. No. 10-20927 JKF CLERK, U.S. BANKRUPTCY COURT  
WEST. DIST. OF PENNSYLVANIA

Chapter No. 13

Document No. 32

Hearing Date: April 20, 2011

Hearing Time: 09:30 AM

Objection Date: March 30, 2011

ORDER GRANTING IN REM RELIEF FROM THE AUTOMATIC STAY

AND NOW, this 20 day of April, 2011, at PITTSBURGH, upon consideration of the Movant's Motion for In Rem Relief from the Automatic Stay Pursuant to 11 U.S.C. §362(d)(4) and hearing it is hereby:

ORDERED that the Automatic stay of all proceedings, as provided under 11 U.S.C. Section §362 of the Bankruptcy Code is modified with respect to premises, 2520 BEAVER AVENUE, MONACA, PA 15061-1241, as more fully set forth in the legal description attached to said mortgage, as to allow the Movant to foreclose on its mortgage or take any legal or consensual action enforcement of its right to possession of, or title to, said premises (such actions may include but are not limited to the signing of a deed in lieu of foreclosure or entering into a loan modification agreement) and to allow the purchaser of said premises at Sheriff's Sale (or purchaser's assignee) to take any legal or consensual action for enforcement of its right to possession of, or title to, said premises; and it is further;

ORDERED that if any future bankruptcy cases are filed by this Debtor, or any other occupant or owner of the real property located at 2520 BEAVER AVENUE, MONACA, PA 15061-1241, within 2 years from the date of this order, such a bankruptcy filing shall not trigger the Automatic Stay under 11 U.S.C. §362(a) as to the real property located at 2520 BEAVER AVENUE, MONACA, PA 15061-1241; and it is further;

ORDERED that in accordance with section 362(d)(4) that a certified copy of this order may be indexed and/or recorded with any governmental unit that accepts notices of interests or liens in real property; and it is further;

ORDERED that Rule 4001(a)(3) is not applicable and HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE FOR HOME EQUITY LOAN TRUST SERIES ACE 2004-HE3 may immediately enforce and implement this Order granting In Rem relief from the Automatic Stay; and it is further;

*Ordered that this court abstains, in favor of the Beaver County Court of Common Pleas, over the litigation con-*

*J. Fitzgerald*  
JUDITH K. FITZGERALD, BANKRUPTCY  
JUDGE

*cerning the foreclosure, and all matters related thereto, of this property. In addition, the objection to this claim is stayed, pending resolution of the →*

foreclosure action. HSBC through its  
counsel, Mr. Gaertner, shall advise  
the Trustee, Debtor and this Court  
of the result of the foreclosure  
action and shall request this  
Court to re-schedule the objection  
to claim.

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**ASSIGNMENT OF MORTGAGE**

KNOW ALL MEN BY THESE PRESENTS that "Mortgage Electronic Registration Systems, Inc." hereinafter "Assignor" the holder of the Mortgage hereinafter mentioned, for and in consideration of the sum of ONE DOLLAR (\$1.00) lawful money unto it in hand paid by HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE FOR HOME EQUITY LOAN TRUST SERIES ACE 2004-HE3, "Assignee," the receipt whereof is acknowledged, has granted, bargained, sold, assigned, transferred and set over unto the said Assignee, its successors and assigns, ALL THAT CERTAIN Indenture of Mortgage given and executed by SUSAN J. SCHOFIELD to MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INCORPORATED AS A NOMINEE FOR PEOPLE'S CHOICE HOME LOANS, INC., bearing the date 08/18/2004, in the amount of \$42,500.00, together with the Note and indebtedness therein mentioned, said Mortgage being recorded on 08/25/2004 in the County of BEAVER, Commonwealth of Pennsylvania, in Instrument # 3217998, MIN: 100273900101367984.

Being Known as Premises: 2520 BEAVER AVENUE, MONACA, PA 15061-1241  
Parcel No: 38-003-0146.000-01-1

The transfer of the mortgage and accompanying rights was effective at the time the loan was sold and consideration passed to the Assignee. This assignment is solely intended to describe the instrument sold in a manner sufficient to put third parties on public notice of what has been sold.

Also the Bond or Obligation in the said Indenture of Mortgage recited, and all Moneys, Principal and Interest, due and to grow due thereon, with the Warrant of Attorney to the said Obligation annexed. Together with all Rights, Remedies and incidents thereunto belonging. And all its Right, Title, Interest, Property, Claim and Demand, in and to the same:

TO HAVE, HOLD, RECEIVE AND TAKE, all and singular the hereditaments and premises granted and assigned, or mentioned and intended so to be, with the appurtenances unto Assignee, its successors and assigns, to and for its only proper use, benefit and behoof forever; subject, nevertheless, to the equity of redemption of said Mortgagor in the said Indenture of Mortgage named, and his/her/their heirs and assigns therein.

IN WITNESS WHEREOF, the said "Assignor" has caused its Corporate Seal to be herein affixed and these presents to be duly executed by its proper officers this 13 day of January, 2009.

Mortgage Electronic Registration Systems, Inc.

By: [Signature]

Francis S Hallinan, Assistant Secretary and Vice President

Sealed and Delivered  
in the presence of us;

State of Pennsylvania :  
County of Philadelphia : ss.

On this 13 day of JAN, 2009, before me, the subscriber, personally appeared Francis S Hallinan, who acknowledged himself to be the Assistant Secretary and Vice President of Mortgage Electronic Registration Systems, Inc., and that he, as such Assistant Secretary and Vice President, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Stamp/Seal: COMMONWEALTH OF PENNSYLVANIA  
NOTARIAL SEAL  
RYAN P. GALVIN, Notary Public  
City of Philadelphia, Phila. County  
My Commission Expires December 21, 2012

[Signature]  
Notary Public

The precise address of the within named Assignee is:

3476 STATEVIEW BLVD  
FORT MILL, SC 29715

By: [Signature]  
(For Assignee)

After recording return to:  
Phelan Hallinan & Schmieg, LLP  
1617 JFK Boulevard, Suite 1400  
One Penn Center Plaza  
Philadelphia, PA 19103

January 12, 2009  
Document Execution  
1158005424  
PHS # 191523

JAM TRANSFERS/ MAIL ASGN 28.50 Beaver County  
3338536  
Page: 1 of 2  
02/10/2009 08:41A

3

ALL that certain parcel or lot of land situate in the Fifth Ward of the Borough of Monaca, Beaver County, Pennsylvania, being Lot No. 52 and 53 in the Allaire Land Company Plan of Lots as recorded in Beaver County Courthouse in Plan Book Volume 1, pages 178 and 179.

ALSO HAVING erected thereon a dwelling known and numbered as 2520 Beaver Avenue, Monaca, PA 15061.

ALSO BEING designated as Parcel Number 38-003-0146.000-01-1.



I hereby CERTIFY that this document is recorded in the Recorder's Office of Beaver County, Pennsylvania

*Janice Jacobus Beall*

This Document Recorded

02/10/2009

08:41AM

Instrument: ASGN

Instr #: 3338536

Receipt #: 509252

Rec Fee: 28.50

Beaver County, Recorder of Deeds



**3338536**

Page: 2 of 2

02/10/2009 08:41A

JAM TRANSFERS/ MAIL

ASGN

28.50 Beaver County